

NLWJC - KAGAN

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ARMS - BOX 029 - FOLDER -008

[05/08/1998]

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	from Sylvia Matthews to Andrew Mayock et al subject Criminal Justice [partial] (1 page)	05/08/1998	P6/b(6)

COLLECTION:

Clinton Presidential Records
Automated Records Management System [Email]
OPD ([Kagan])
OA/Box Number: 250000

FOLDER TITLE:

[05/08/1998]

2009-1006-F

kc155

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

Freedom of Information Act - [5 U.S.C. 552(b)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Andrea Kane (CN=Andrea Kane/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME: 8-MAY-1998 11:14:02.00

SUBJECT: WtW Formula Grant Update

TO: Lynn G. Cutler (CN=Lynn G. Cutler/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Diana Fortuna (CN=Diana Fortuna/OU=OPD/O=EOP [OPD])
READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Fred DuVal (CN=Fred DuVal/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Emil E. Parker (CN=Emil E. Parker/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Cynthia A. Rice (CN=Cynthia A. Rice/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Bruce N. Reed (CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Sanders D. Korenman (CN=Sanders D. Korenman/OU=CEA/O=EOP @ EOP [CEA])
READ:UNKNOWN

CC: Anil Kakani (CN=Anil Kakani/OU=OMB/O=EOP @ EOP [OMB])
READ:UNKNOWN

CC: Maria J. Hanratty (CN=Maria J. Hanratty/OU=CEA/O=EOP @ EOP [CEA])
READ:UNKNOWN

CC: Maureen H. Walsh (CN=Maureen H. Walsh/OU=OMB/O=EOP @ EOP [OMB])
READ:UNKNOWN

TEXT:

Attached is latest status of states and tribes applying for Welfare-to-Work formula grants. It looks like Ohio's decision to turn down the grant does not reflect a trend. Since then, at least 7 more states have submitted plans. A total of 30 states have applied, 17 have been approved, 6 have indicated they don't plan to apply, and 18 have not yet applied.

===== ATTACHMENT 1 =====

ATT CREATION TIME/DATE: 0 00:00:00.00

TEXT:

Unable to convert ARMS_EXT:[ATTACH.D8]MAIL40388772H.126 to ASCII,
The following is a HEX DUMP:

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50490D7C4FD41979EA657F678066E0B82CD562201E6A8C176B65FF96E5F294012AD25DF569BCF5
DF23E80EF5CD560B1DBE83FB5082B58D8619175239C3D8C0AF9CCDE6A1F915A37F03CB6F9F0FCF
74C2AD489444D3A76C9324721A79E0711B3A330315837483246CF669889D828873B37AA9A566FD
A8B26C9ED696076A4BE7FB2E3AD7FE3F5A14A25E7168D1FB680B41EE87304FC01273E60B95F016

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Karen Tramontano (CN=Karen Tramontano/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME: 8-MAY-1998 11:30:11.00

SUBJECT: Fight Crime, Invest in Kids

TO: Cynthia A. Rice (CN=Cynthia A. Rice/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Laura Emmett (CN=Laura Emmett/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TEXT:

Sandy Newman, the ED of this organization is a good friend --- he wants to help us on tobacco expecially regarding the "increased crime--black market" republican push back -- he has 250 law enforcement officials --- from police chiefs to states' attorneys in his organization -- i know yo have a meeting --or cynthia has set up a meeting w/ treas. today at 4:30 --- sandy thinks that he can issue a strong report that will commend the Administration for our strong fight against crime -- but he also thinks that if we can target more funds for child care that crime will actually decrease -- so, i hope he can be helpful --- just wanted you to have this on your radar screen and also wanted to validate sandy --- he does very good work. thanks

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Kevin S. Moran (CN=Kevin S. Moran/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME: 8-MAY-1998 15:50:04.00

SUBJECT: Daily Message Calendar (5/11 - 5/17)

TO: Lawrence J. Stein (CN=Lawrence J. Stein/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Tracey E. Thornton (CN=Tracey E. Thornton/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Nathan B. Naylor (CN=Nathan B. Naylor/O=OVP @ OVP [UNKNOWN])
READ:UNKNOWN

TO: Andrei H. Cherny (CN=Andrei H. Cherny/O=OVP @ OVP [UNKNOWN])
READ:UNKNOWN

TO: Stacie Spector (CN=Stacie Spector/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Kris M Balderston (CN=Kris M Balderston/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Simeona F. Pasquil (CN=Simeona F. Pasquil/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Julie E. Mason (CN=Julie E. Mason/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Anne E. McGuire (CN=Anne E. McGuire/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Susan M. Liss (CN=Susan M. Liss/O=OVP @ OVP [UNKNOWN])
READ:UNKNOWN

TO: Ellen M. Lovell (CN=Ellen M. Lovell/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Michael D. Malone (CN=Michael D. Malone/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Peter Rundlet (CN=Peter Rundlet/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Beverly J. Barnes (CN=Beverly J. Barnes/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Dan K. Rosenthal (CN=Dan K. Rosenthal/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Laura A. Graham (CN=Laura A. Graham/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Jennifer M. Palmieri (CN=Jennifer M. Palmieri/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Nanda Chitre (CN=Nanda Chitre/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TO: Joseph P. Lockhart (CN=Joseph P. Lockhart/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Michael D. McCurry (CN=Michael D. McCurry/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Judith A. Winston (CN=Judith A. Winston/OU=PIR/O=EOP @ EOP [PIR])
READ:UNKNOWN

TO: Minyon Moore (CN=Minyon Moore/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Doris O. Matsui (CN=Doris O. Matsui/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Maria Echaveste (CN=Maria Echaveste/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Jonathan A. Kaplan (CN=Jonathan A. Kaplan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Gene B. Sperling (CN=Gene B. Sperling/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Jeffrey A. Forbes (CN=Jeffrey A. Forbes/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Fred DuVal (CN=Fred DuVal/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Lynn G. Cutler (CN=Lynn G. Cutler/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Christa Robinson (CN=Christa Robinson/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Bruce N. Reed (CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: David S. Beaubaire (CN=David S. Beaubaire/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Marsha E. Berry (CN=Marsha E. Berry/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Katharine Button (CN=Katharine Button/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Virginia M. Terzano (CN=Virginia M. Terzano/O=OVP @ OVP [UNKNOWN])
READ:UNKNOWN

TO: Douglas B. Sosnik (CN=Douglas B. Sosnik/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Jason S. Goldberg (CN=Jason S. Goldberg/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Andrew J. Mayock (CN=Andrew J. Mayock/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TO: Sylvia M. Mathews (CN=Sylvia M. Mathews/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Robin J. Bachman (CN=Robin J. Bachman/OU=WHO/O=EOP [WHO])
READ:UNKNOWN

TO: Thomas D. Janenda (CN=Thomas D. Janenda/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: LEAVY_D (LEAVY_D @ A1 @ CD @ LNGTWY [UNKNOWN]) (NSC)
READ:UNKNOWN

TO: Lowell A. Weiss (CN=Lowell A. Weiss/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Jordan Tamagni (CN=Jordan Tamagni/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Ruby Shamir (CN=Ruby Shamir/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Ann F. Walker (CN=Ann F. Walker/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Paul E. Begala (CN=Paul E. Begala/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Janet Murguia (CN=Janet Murguia/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Charles M. Brain (CN=Charles M. Brain/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Chandler G. Spaulding (CN=Chandler G. Spaulding/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Elliot J. Diringer (CN=Elliot J. Diringer/OU=CEQ/O=EOP @ EOP [CEQ])
READ:UNKNOWN

TO: Lori L. Anderson (CN=Lori L. Anderson/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Linda L. Moore (CN=Linda L. Moore/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Nicholas R. Baldick (CN=Nicholas R. Baldick/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Suzanne Dale (CN=Suzanne Dale/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Jennifer N. Devlin (CN=Jennifer N. Devlin/O=OVP @ OVP [UNKNOWN])
READ:UNKNOWN

TO: Kathleen A. McGinty (CN=Kathleen A. McGinty/OU=CEQ/O=EOP @ EOP [CEQ])
READ:UNKNOWN

TO: Audrey T. Haynes (CN=Audrey T. Haynes/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TO: Virginia Apuzzo (CN=Virginia Apuzzo/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Karen Tramontano (CN=Karen Tramontano/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Christopher Wayne (CN=Christopher Wayne/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Todd Stern (CN=Todd Stern/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Aviva Steinberg (CN=Aviva Steinberg/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Stephanie S. Streett (CN=Stephanie S. Streett/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Barry J. Toiv (CN=Barry J. Toiv/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Amy W. Tobe (CN=Amy W. Tobe/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Claire Gonzales (CN=Claire Gonzales/OU=PIR/O=EOP @ EOP [PIR])
READ:UNKNOWN

TO: Karen E. Skelton (CN=Karen E. Skelton/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Craig T. Smith (CN=Craig T. Smith/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Robert B. Johnson (CN=Robert B. Johnson/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Jake Siewert (CN=Jake Siewert/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Jonathan Orszag (CN=Jonathan Orszag/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Cecily C. Williams (CN=Cecily C. Williams/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Emily Bromberg (CN=Emily Bromberg/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Mickey Ibarra (CN=Mickey Ibarra/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Cheryl D. Mills (CN=Cheryl D. Mills/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Thurgood Marshall Jr (CN=Thurgood Marshall Jr/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TO: Roberta W. Greene (CN=Roberta W. Greene/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Eli G. Attie (CN=Eli G. Attie/O=OVP @ OVP [UNKNOWN])
READ:UNKNOWN

TO: Ron Klain (CN=Ron Klain/O=OVP @ OVP [UNKNOWN])
READ:UNKNOWN

TO: Michelle Crisci (CN=Michelle Crisci/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Sara M. Latham (CN=Sara M. Latham/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: John Podesta (CN=John Podesta/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Erskine B. Bowles (CN=Erskine B. Bowles/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Glen M. Weiner (CN=Glen M. Weiner/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: SHOWALTER_V (SHOWALTER_V @ A1 @ CD @ VAXGTWY [UNKNOWN]) (NSC)
READ:UNKNOWN

TO: Antony J. Blinken (CN=Antony J. Blinken/OU=NSC/O=EOP @ EOP [NSC])
READ:UNKNOWN

TO: June Shih (CN=June Shih/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Michael Waldman (CN=Michael Waldman/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Kevin S. Moran (CN=Kevin S. Moran/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Sidney Blumenthal (CN=Sidney Blumenthal/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Ann F. Lewis (CN=Ann F. Lewis/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TEXT:

===== ATTACHMENT 1 =====
ATT CREATION TIME/DATE: 0 00:00:00.00

TEXT:

Unable to convert ARMS_EXT:[ATTACH.D47]MAIL410454823.126 to ASCII,
The following is a HEX DUMP:

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```

THE WEEK AHEAD

May 11 - May 17

(All items are subject to change.)

Monday (5/11): Message event to be determined.

Tuesday (5/12): President Clinton will hold a Rose Garden event to announce his comprehensive strategy for combating international crime. President Clinton will depart for a seven day trip to Germany and the United Kingdom.

Wednesday (5/13): President Clinton travels to Berlin where he will make an address articulating his vision on the future of our Trans-Atlantic relationship.

Thursday (5/14): In Berlin, President Clinton will commemorate the 50th anniversary of the Berlin Airlift, emphasizing the close relationship America shares with Germany. Then President Clinton will travel to Eisenach (a "new" German state, formerly part of East Germany), where he will highlight Germany's success in uniting its divided parts. While in eastern Germany, President Clinton will also visit an Opel plant.

Friday (5/15): President Clinton will travel to Birmingham, England to attend the Summit of the Eight. He will hold bilateral meetings with President Chirac and Prime Minister Hashimoto and attend other meetings that are part of the Summit. The Summit will focus on ways to encourage economic growth and development while safeguarding the environment and promoting good governance.

Saturday (5/16): President Clinton will deliver a taped radio address (subject TBD). President Clinton attends G-8 meetings to discuss strategies for addressing international crime and for making workers more employable.

Sunday (5/17): President Clinton will conclude his meetings at the Summit and will attend the G-8 Chairman's press conference. He will also hold a bilateral meeting with President Yeltsin, emphasizing the importance of US-Russian relations to building a new, prosperous and secure Europe. In the afternoon, the President will travel to Chequers for a private conference with Prime Minister Blair.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Thomas L. Freedman (CN=Thomas L. Freedman/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME: 8-MAY-1998 15:44:05.00

SUBJECT:

TO: TOM (Pager) #FREEDMAN (TOM (Pager) #FREEDMAN [UNKNOWN])
READ:UNKNOWN

TO: ELENA (Pager) #KAGAN (ELENA (Pager) #KAGAN [UNKNOWN])
READ:UNKNOWN

TO: BRUCE N. (Pager) #REED (BRUCE N. (Pager) #REED [UNKNOWN])
READ:UNKNOWN

TEXT:

BR/EK FDA wants to background on GAO rpt at 5 today. Seems Fine. Tom

May 8, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Elena Kagan

RE: DPC Weekly Report

Tobacco -- Legislative Update: Although Senator Lott vacillated somewhat in the press this week, it appears he still intends to bring the McCain bill to the Senate floor on May 18th. We hope to begin talks shortly to develop an agreed upon manager's amendment as well as an amendment strategy for the floor. We have spent this week in internal meetings preparing for these negotiations in order to nail down our position and strategy on issues related to price, lookback penalties, smuggling, an antitrust exemption, preemption of local suits, environmental tobacco smoke, attorneys fees, and international tobacco control.

The Commerce Committee released their report this week, along with a revised bill that incorporated several of our proposed technical corrections. In response to their request for assistance in restructuring the bill so that it could operate effectively whether or not the industry consents, we met with Senator McCain's staff and provided them with **proposed revisions that separated out all the provisions requiring the consent of participating manufacturers -- as well as the benefits they are seeking, such as the liability cap -- into a single stand-alone title.** The other titles would apply to all manufacturers, whether they consent or not, and include advertising restrictions originally included in the FDA rule but not the broader ones that raise constitutional difficulties (those would be put in the separate title). McCain's staff appeared receptive to these changes, and they are considering including them in a manager's amendment.

We also met with Senator Hatch to assess his interest in these proposed structural changes, hoping that they could give him a way to leave his mark on the McCain bill constructively. While he expressed some interest in the proposal, he also reiterated concerns he raised during the Judiciary Committee hearing on smuggling -- namely, that the McCain bill would result in increased smuggling and would bankrupt the companies.

Tobacco -- Scoring: Through staff conversations, OMB has learned that the Joint Tax Committee is going to score the price per pack increase in the McCain bill at \$2, instead of the \$1.10 estimated by Treasury. We attribute this difference to Joint Tax's more conservative assumptions about the amount of industry payments that will be passed through to price, smuggling and coverage of tobacco products other than cigarettes. We have asked OMB to draft

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a proposal which would ensure that as the volume of cigarette sales fall due to reduced smoking rates, the price would not rise accordingly.

Tobacco -- House Activity: Representatives Hansen, Meehan, and Waxman announced that they would introduce a bipartisan comprehensive tobacco legislation which would raise the price of cigarettes by \$1.50 over three years, reduce youth smoking by 80% over 10 years (compared to 60% in McCain), contain very strong company specific penalties (but no industry-wide penalties), provide full FDA authority to regulate tobacco under the existing drug and device titles, and have strong protections against environmental smoke. The proposal would raise approximately \$500 billion over 25 years, with 10% of spending for public health and education programs, 35% for the states, and 55% for federal debt reduction. The proposal does not provide any assistance to farmers. Drs. Koop and Kessler endorsed the bill.

Health Care -- Medicare and Abortion Coverage: Recently, a provider sponsored organization (PSO), which is a member of the Catholic Health Association (CHA), was informed by a Health Care Financing Administration (HCFA) regional office that it could not participate in Medicare unless it agreed to provide abortion services for Medicare beneficiaries. Although a little known fact, Medicare does provide reimbursement for those limited occasions when a disabled Medicare beneficiary is pregnant and seeks an abortion. The CHA requested that we attempt to find an exception for PSOs that object to providing the service on religious/moral grounds. Senator Nickles is also placing great pressure on HHS to develop a formal position. He is reportedly drafting legislation that would apply the Hyde Amendment to Medicare if we conclude that Hyde does not have the statutory reach to apply to Medicare. (HHS initial review has concluded that Hyde does not apply, but we are having White House lawyers review this analysis.) Even if Hyde does not apply, we believe we may have found a way to respond to CHA's request. Specifically, PSOs that have "conscience clause" policies could be exempt from providing abortion services; beneficiaries in these plans could go to a physician that billed Medicare directly for the service. Unfortunately, Senator Nickles is not likely to accept this option, even if CHA does. He clearly sees this as an extremely attractive election year issue. Ironically, however, since the Hyde amendment has a rape or incest exception, our approach -- which would not require that these PSOs reimburse for any abortion -- is more responsive to and consistent with the CHA position. We have a working group from DPC, Council's office, OMB, and HHS reviewing legal, policy and strategic options. You will receive an options memo on this issue shortly.

Health Care -- Genetic Discrimination Update: Senator Jeffords, Chairman of the Senate Labor and Human Resources Committee, has indicated his intention to produce a bipartisan bill -- likely with Senator Dodd -- that prohibits insurers from accessing and inappropriately utilizing genetic coding information. This is consistent with your challenge to Congress to pass legislation to bar both insurers and employers to use genetic information in a discriminatory fashion. The Senator's announcement was as surprising as it is welcome; we will be sending

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Administration witnesses to testify at the Labor Committee's hearing on this subject within the next two weeks. While it will take work, we believe this Committee activity has every real chance of making a significant contribution toward passing this bill either as a free standing measure, as part of a patients bill of rights bill, or as part of a broader medical records/privacy initiative.

Child Care -- Democratic Working Group: House Democrats have formed a Child Care Working Group led by Congressman Fazio and have begun work on a child care bill that they plan to introduce in the next several weeks. We are meeting with the Members and staff next week to review their bill, but we expect it to include most of the elements of your proposal (including subsidies for families, tax credits for families and businesses, quality improvements, and after-school programs) as well as a tax credit to help parents who stay at home. We will continue to work with them and use the introduction of the bill to generate new momentum for child care legislation; however, it seems likely that the group intends to craft a comprehensive and expensive proposal that will give them an opportunity to champion child care throughout the Fall rather than a bill that has a chance of passage during this legislative session.

Child Care -- Kids Count: We participated in a panel discussion and release of the Annie E. Casey Foundation's *KIDS COUNT* Databook, annual publication tracking the status of children in the United States. This year, the report highlights the need for safe and affordable child care, particularly for the 10 million children who grow up in low-income working families, and concludes that ensuring adequate child care is crucial to the success of welfare reform.

Welfare Reform -- Federal Hiring Initiative: The federal agencies continue to make progress on their commitments to hire welfare recipients. The total number of hires increased by 22 percent in the past month, from 3,688 in March to 4,494 in April. Treasury hired almost 400 people in the past month and has already hired more than double its commitment through the year 2000. DOD hired an additional 200 people in the past month.

Crime -- Uniform Crime Report: Next weekend (May 15-17), the FBI will release its preliminary estimate of the number of crimes reported to law enforcement in 1997. These figures indicate that crime is down 4% from the previous year -- and down for the 6th year in a row. A significant decline in the number of murders and robberies (9% each) helped fuel an overall drop of 5% in violent crime; property crime fell 4%. All regions of the country and cities of all sizes reported declines in the number of serious crimes.

Crime -- COPS: On Thursday, the COPS Office announced \$32.8 million in funding to hire 463 additional officers and deputies. The grants will go to 138 law enforcement agencies nationwide, bringing the total number of officers funded under the COPS Program to over 73,000.

Crime -- Gun-Free Schools Report: Several weeks ago we sent you information on the Department of Education's proposed Gun-Free Schools Report for the 1996-97 school year. As

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you know, this information was released this Friday, but with several major revisions. Most notably, the initial data from Colorado included all expulsion and were adjusted significantly downward (from 1,873 to 475). The final and revised key findings are:

- 1) Total expulsions: 6,093 students were expelled during the 1996-97 school year for bringing a firearm to school (a rate of .119 per 1,000 students).
- 2) Compliance up: 55 states and territories reported data during the 1996-97 school year. Only American Samoa did not report.
- 3) States with most expulsions: by number, were Ohio (937), California (723), and Texas (532); and by rate, Ohio (.449 per 1,000), Missouri (.310 per 1,000) and New Mexico (.195 per 1,000).
- 4) School level: 58% of expulsions were high school students, 34% were in junior high, and 9% were in elementary school.
- 5) Type of firearm: where firearm type was identified, 58% involved handguns, 7% involved rifles and the remaining 35% involved some other type of firearm (bombs, grenades, starter pistols, rockets).

Drugs -- Republican Plan: Following up on last week's "deployment ceremony," the Speaker's Task Force for A Drug-Free America declared this week "Drug-Free Schools and Campuses Week" and highlighted the following items: (1) a House-passed resolution expressing the sense of the House that Americans must remain committed to combat the sale and use of illegal drugs to children; (2) the drug-free student loans provision included in the Higher Education bill; and (3) legislation introduced by Representative Mica that authorizes a demonstration program for the voluntary drug testing of teens applying for driver's licenses, and an incentive grant program to combat drugged driving. As you know, in October of 1996 you signed a directive on this issue, and former Transportation Secretary Pena and Director McCaffrey jointly recommended the creation of a demonstration program for pre-licensure drug testing; however, in the FY 1998 transportation appropriations, Republican appropriators barred DOT from using its funds such an initiative. Since then, we have been working to identify alternative funding within the Justice Department for demonstrations in Arizona and Florida.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Bruce N. Reed (CN=Bruce N. Reed/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME: 8-MAY-1998 19:34:18.00

SUBJECT: nickles attack

TO: Joshua Gotbaum (CN=Joshua Gotbaum/OU=OMB/O=EOP @ EOP [OMB])
READ:UNKNOWN

TO: Cynthia Dailard (CN=Cynthia Dailard/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Cynthia A. Rice (CN=Cynthia A. Rice/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TEXT:

Here's a Nickles-inspired attack on McCain, using nominal rather than real #'s.

Cynthias, we should probably have Q&A.

Republicans see tobacco bill cost underestimated

WASHINGTON, May 8 (Reuters) - A Senate Republican analysis of the tobacco bill puts the 25-year cost to the industry in the neighborhood of \$700 billion, far more than bill sponsor Sen. John McCain estimates, according to Senate sources who expect the report to be released late Friday.

Commerce Committee chairman John McCain, an Arizona Republican, estimates that the tobacco industry would have to pay about \$516 billion over 25 years, not counting extra penalties that would kick in if the industry missed youth smoking reduction targets.

The new report will be issued by the Senate Republican policy committee, and may bolster critics of the bill, tentatively slated to come to the Senate floor in 10 days. Until it is publicly released, it is not clear whether the diverging estimates come from different views of the bill itself, or from such factors as inflation estimates.

The McCain bill got a bipartisan 19-1 vote in the Commerce Committee, and its backers still believe that some rank and file Republicans will support it, or a bill that resembles it, despite the opposition of some Senate Republican leaders.

Assistant Republican Leader Don Nickles of Oklahoma, a fierce critic of the McCain bill, plans to introduce either an alternative bill or a set of major amendments to significantly scale back McCain's

blueprint for bringing down teen smoking.

Nickles has criticized the price tag, as well as provisions giving the Food and Drug Administration explicit authority over nicotine and tobacco. Nickles opposes an FDA requirement, already in effect, that cigarette purchasers must show a photo identification if they look 27 or under.

On the other side, some anti-tobacco lawmakers, mostly Democrats, want to raise the price even higher, boosting McCain's \$1.10 per cigarette pack price increase to \$1.50.

Meanwhile, both sides have stepped up their advertising. The industry is running ads in at least 40 markets, hitting themes about big government, taxation, and how the high cost of cigarettes would create a black market.

Democratic critics estimate that the industry has planned a \$50 million television, radio and print campaign against the bill, although that sum has not been spent so far. Industry spokesmen have said that estimate is too high.

The Campaign for Tobacco Free Kids Friday started its own print ads, showing the Marlboro Man hovering over two children. Ads are targeted to specific Congressional districts and Senators.

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	from Sylvia Matthews to Andrew Mayock et al subject Criminal Justice [partial] (1 page)	05/08/1998	P6/b(6)

COLLECTION:

Clinton Presidential Records
Automated Records Management System [Email]
OPD ([Kagan])
OA/Box Number: 250000

FOLDER TITLE:

[05/08/1998]

2009-1006-F
kc155

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

Freedom of Information Act - [5 U.S.C. 552(b)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

[001]

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Sylvia M. Mathews (CN=Sylvia M. Mathews/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME: 8-MAY-1998 19:24:54.00

SUBJECT: Criminal Justice

TO: Andrew J. Mayock (CN=Andrew J. Mayock/OU=WHO/O=EOP [WHO])
READ:UNKNOWN

TO: Minyon Moore (CN=Minyon Moore/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Bruce N. Reed (CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Richard Socarides (CN=Richard Socarides/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TEXT:

Some (not all) good thoughts.

----- Forwarded by Sylvia M. Mathews/WHO/EOP on 05/08/98
06:56 PM -----

"Christopher Edley, Jr." <edley @ law.harvard.edu>
05/08/98 07:52:10 AM

Record Type: Record

To: Sylvia M. Mathews/WHO/EOP
cc:
Subject: Criminal Justice

Thanks for sharing Scott's draft with me. He had e-mailed me this version and an earlier one, but I took a quick look and decided not to weigh in. My bad (old) attitude. But now I have an improved (positive) attitude. Probably from our talk.

P6/(b)(6)	P6/(b)(6)
-----------	-----------

1. This version is watered down from the earlier version. Reportedly, that's because Rahm was very concerned that the earlier version had controversial stuff in it that would bash cops. (Which we definitely don't want to do.) The problem is, this version misses the point of these roundtable discussions.
2. I've done these. Ogletree is a master. There's a formula for scripting and producing these discussions. It involves: pick a couple of tough issues; understand the intellectual structure of the issue, so you know the two or three contrasting perspectives/arguments; figure out which of your discussants will articulate which viewpoints, and which hard questions to ask them in order to "move" them towards each other; conceptualize the common-ground type resolution or conclusion to which you want to lead the discussion.

3. The three issues (profiling, incarceration/sentencing, full/equal service) strike me as perfect. But they need to be fleshed out per point #2 above. Ogletree can and should do this; would be good to fly him down to listen to you or Rahm or Jose Cerda discuss this stuff. But I suggest you rely on Maria (they are friends and huge mutual fans from college) and me to be straight with him about our political concerns/needs.

4. Rahm, I suspect, is interested in emphasizing community policing and "solutions", not the controversy. This is not quite right. You have to explore the conflict to connect with people and draw them in; you can't just lay the prescriptions on them. You argue (constructively, honestly) about the problems, and then raise ideas like community policing as solutions. Lead people to the solution, don't push/lecture.

5. Trust Ogletree's advice on participants. Don't you need articulate and thoughtful people. "Ordinary" folks don't do so well at this, frankly. You aren't looking for faux authenticity. You are looking for people who can advance the ball.

Thanks for asking. Let me know if I can help with Ogletree. (I had a phone chat with him a couple of weeks ago to encourage him to agree to do this. But I haven't spoken with him since.)

Christopher Edley, Jr.
Professor of Law
Harvard Law School
Cambridge MA 02138
617-495-4614

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Thomas L. Freedman (CN=Thomas L. Freedman/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME: 8-MAY-1998 13:56:21.00

SUBJECT: Food Safety & GAO

TO: Bruce N. Reed (CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Mary L. Smith (CN=Mary L. Smith/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Laura Emmett (CN=Laura Emmett/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TEXT:

FYI. Jim O'hara called to say they expect Senator Collins to release a GAO report Monday on food imports that recommends more resources and legislative authority for FDA. Those are conclusions that we can say support our position and O'hara planned to have Mike Friedman comment on it to that effect. I'll try and get some q and a together.

May 8, 1998

MEMORANDUM TO THE PRESIDENT

FROM: Bruce Reed
Chuck Ruff

SUBJECT: Assisted Suicide Legislation

The Justice Department has determined that the Drug Enforcement Administration (DEA) has no authority under the Controlled Substances Act (CSA) to take adverse action against physicians who assist patients in ending their lives by prescribing controlled substances pursuant to Oregon's "Death with Dignity Act." The Department conducted its legal analysis in response to letters sent by Senator Hatch and Congressman Hyde urging the Department, through DEA, to invoke the CSA against physicians who assist in patient suicide under the Oregon law.

The Justice Department has completed draft letters to Congressman Hyde and Senator Hatch explaining its legal conclusions. The letters will not be forwarded to Congress until we have developed a roll-out strategy, including a position on federal legislation prohibiting physician-assisted suicide.

As you will recall, the Catholic Health Association (CHA) has informed us that Hatch and Hyde are prepared to introduce legislation amending the CSA in the event the Attorney General concludes that the CSA does not authorize the DEA to pursue physicians who assist patients in committing suicide. They may even introduce this legislation before receiving the Department of Justice's opinion letter. In assessing the possible options for responding to Hatch's and Hyde's likely initiative, we held meetings within the White House and with the Departments of Justice and Health and Human Services (including the FDA).

Justice believes that the Administration should not support the Hatch/Hyde proposal. Justice is concerned with the resource drain on the DEA if that agency were tasked with enforcement duty. Justice also worries that this new task would damage DEA's relationship with the medical profession, on which it often relies in pursuing narcotics law violations. In addition, Justice thinks that DEA's approach to enforcing the narcotics laws is inconsistent with the kind of sensitivity that would be needed in pursuing doctors who are assisting terminally ill patients to commit suicide.

The Justice Department also cites principles of federalism in support of its position against a legislative change. The federal government has deferred to the states as the primary regulators of the medical profession. Especially on such a hotly contested issue as assisted suicide, Justice believes there is good reason to continue this tradition of deference to local

decisionmaking.

HHS/FDA concurs with Justice's position, stressing especially the historic deference given to states in regulating the medical profession. HHS/FDA also worries that a new federal law authorizing the federal government to take adverse action against doctors who assist their patients to commit suicide would exacerbate the problem of physicians' underprescribing pain medications for terminally ill patients.

Your longstanding opposition to the practice of assisted suicide is not necessarily inconsistent with the agencies' positions. You could argue that assisted suicide is wrong, but that it is not a matter that should be handled by federal narcotics agents. Or more broadly, you could argue that it is not a matter to be dealt with by the federal government at all, but instead left to state and local decisionmaking. Nor is last year's "Assisted Suicide Funding Restriction Act" inconsistent with a refusal to support a legislative change. The Funding Restriction Act bans the use of federal funds to pay for or promote assisted suicide. Nothing in the Act authorizes the federal government to take adverse action against a private physician for assisting in a suicide in a non-federal facility.

We detail below four options for responding to the expected Hyde/Hatch initiative. These options are: (1) support the Hyde/Hatch legislation; (2) oppose the Hyde/Hatch DEA approach, but suggest openness to alternatives and work with Hatch and Hyde to develop a better bill; (3) engage in a "Kick the Can" strategy, suggesting openness to alternatives, but attempting to ensure that no congressional action is taken; and (4) oppose the Hyde/Hatch legislation outright.

1. **Endorse Hyde/Hatch Legislative Alternative.** After the Justice Department's legal interpretation is released, we could endorse the expected introduction of the Hatch/Hyde legislation authorizing the DEA to pursue criminal actions against physicians prescribing medications for assisted suicides.

Pros

- Appears consistent with your longstanding opposition to assisted suicide.
- Avoids inevitable conflict with the Congress, where the Hatch/Hyde legislation is likely to be popular.

Cons

- Conflicts with historic practice of allowing states to regulate the medical profession, and does so with regard to a hotly contested and emotional issue on which local decisionmaking may be particularly appropriate.

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- Places authority to act against doctors in an agency ill-equipped to perform this function, in a way that could interfere with the agency's primary mission.
- Ignores danger, noted by many physicians' groups and even the Catholic Health Association, that a federal law of this kind will lead doctors to under-medicate terminally ill patients for fear of federal prosecution.

2. **Oppose Hatch/Hyde legislation, but suggest openness to alternatives.** Under this option, you would welcome the intent of the Hatch/Hyde bill, based on your longstanding opposition to assisted suicide, but raise concerns about using federal drug agents and resources to address this issue. You would advise Republicans of ways to implement the intent of their legislation in a more workable fashion, perhaps suggesting alternative enforcement agencies (such as FDA) or alternative enforcement mechanisms (such as reducing Federal support for Medicaid for states permitting assisted suicide). You would try seriously to find common ground with the Republicans on a workable legislative alternative to DEA enforcement.

Pros

- Appears consistent with your longstanding opposition to assisted suicide and shows that you are seriously concerned about this issue.
- Takes an approach that recognizes the problems with using DEA resources and agents to address this issue.

Cons

- Assumes that we can develop a workable alternative approach, when we may not be able to do so. For example, direct regulation of doctors through HHS/FDA also raises serious issues, and enforcement mechanisms directed toward states, such as reduction of Medicaid dollars, would raise widespread protests of federal micro-management and intrusion.
- Raises expectations that a legislative solution can be achieved, when it may be virtually impossible to reach consensus.

3. **"Kick the Can" Strategy.** Under this option, you would also express openness to addressing this issue through federal legislation, but rather than trying to reach agreement, you would attempt to forestall legislative action. You would try to delay long enough to allow the medical groups, states, and others to communicate that federal approaches in this area are ill-advised. These objections could make Congress conclude that it does not have time to draft thoughtful legislation this year.

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Pros

- Allows you to reiterate your strong position against assisted suicide, while preventing problematic federal legislation.
- Provides sufficient time to air the many issues surrounding assisted suicide legislation, perhaps even educating physicians and the public about the problem of undermedicating terminally ill patients

Cons

- May make us look indecisive and weak.
- May be viewed with skepticism on the Hill and make us vulnerable to the charge that we are trying to have it both ways.

4. **Oppose Hatch/Hyde legislation outright.** Under this option, you would tell the Hill that, although you believe that assisted suicide is immoral, you cannot support legislation that intrudes on state responsibility over this issue and diverts limited law enforcement resources for this purpose.

Pros

- Takes a strong position consistent with agency views on the undesirability of federal legislation in this area: respects federalism principles; protects law enforcement priorities; and prevents further undermedication of patients due to physicians' fear of criminal prosecution.

Cons

- Appears inconsistent with your longstanding opposition to assisted suicide.
- Risks major confrontation with the Congress, which almost certainly will pass federal legislation over your objection.

The Departments of Justice and Health and Human Services support Option 4 and strongly oppose Option 1. Of the middle options, they would prefer Option 3 to Option 2. Chuck agrees with the agencies: he believes both that the DEA should not regulate medical practice and that federal legislation in this area conflicts with federalism principles. Bruce agrees that federal legislation in this area makes little sense, but believes that the "Kick the Can" strategy may be the best way to prevent it; he therefore recommends Option 3.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Diana Fortuna (CN=Diana Fortuna/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME: 8-MAY-1998 10:37:13.00

SUBJECT: Re:

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TEXT:

sure, but I'm about to go into 2 meetings. Is it too late if I get it to you at 12:30 -- 1?

Elena Kagan

05/08/98 10:33:05 AM

Record Type: Record

To: Diana Fortuna/OPD/EOP

cc:

Subject:

could you do something for the weekly on the public benefits issue?
thanks.

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Medicare and Abortion Coverage. Recently, a provider sponsored organization (PSO), which is a member of the Catholic Health Association (CHA), was informed by a Health Care Financing Administration (HCFA) regional office that it could not participate in Medicare unless it agreed to provide abortion services for Medicare beneficiaries. Although a little known fact, Medicare does provide reimbursement for those limited occasions when a disabled Medicare beneficiary is pregnant and seeks an abortion. The CHA requested that we attempt to find an exception for PSOs that object to providing the service on religious/moral grounds. Senator Nickles is also placing great pressure on HHS to develop a formal position. Already he is reportedly drafting legislation that would apply the Hyde Amendment to Medicare if we conclude that Hyde does not have the statutory reach to apply to Medicare. (HHS initial review has concluded that Hyde does not apply, but we are having White House lawyers review this analysis.) Even if Hyde does not apply, we do believe we may have found a way to respond to CHA's request. Specifically, PSOs that have "conscience clause" policies could be exempt from providing abortion services; beneficiaries in these plans could go to a physician that billed Medicare directly for the service. Unfortunately, Senator Nickles is not likely to accept this option, even if CHA does. He clearly sees this as an extremely attractive election year issue. Ironically, however, since the Hyde amendment has a rape or incest exception, our approach -- which would not require that these PSOs reimburse for any abortion -- is more responsive to and consistent with the CHA position. We have a working group from DPC, Council's office, OMB, and HHS reviewing legal, policy and strategic options. We plan on sending you an options memo on this issue shortly.

Genetic Discrimination Update. Senator Jeffords, Chairman of the Senate Labor and Human Resources Committee, has indicated his intention to produce a bipartisan bill -- likely with Senator Dodd -- that prohibits insurers from accessing and inappropriately utilizing genetic coding information. Since last year, you have been calling on the Congress pass legislation to bar both insurers and employers to use genetic information in a discriminatory fashion. The Senator's announcement was as surprising as it is welcome; we will be sending Administration witnesses to testify at the Labor Committee's hearing on this subject within the next two weeks. While it will take work, we believe this Committee activity has every real chance of making a significant contribution toward passing this bill either as a free standing measure, a part of a patients bill of rights bill, or as part of a broader medical records/privacy initiative. We will keep you apprised of developments.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Bruce N. Reed (CN=Bruce N. Reed/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME: 8-MAY-1998 09:09:45.00

SUBJECT: Re: Summer Vacations

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TEXT:

I thought August was four weeks...

Elena Kagan

05/07/98 07:37:49 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP

cc:

Subject: Re: Summer Vacations

Why do I suspect you're setting me up for two weeks with no staff?

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Toby Donenfeld (CN=Toby Donenfeld/O=OVP [UNKNOWN])

CREATION DATE/TIME: 8-MAY-1998 11:30:10.00

SUBJECT: FYI

TO: Cynthia Dailard (CN=Cynthia Dailard/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Cynthia A. Rice (CN=Cynthia A. Rice/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Bruce N. Reed (CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TEXT:
APNewsAlert,0017

\$6 billion settlement reached in Minnesota tobacco trial,
attorney says.
APNP-05-08-98 1125EDT

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Received by NewsEDGE/LAN: 5/8/98 11:24 AM

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Suzanne Dale (CN=Suzanne Dale/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME: 8-MAY-1998 08:30:59.00

SUBJECT: Delaware Briefing Memos

TO: Michael Cohen (CN=Michael Cohen/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Jonathan H. Schnur (CN=Jonathan H. Schnur/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN.

TO: Bruce N. Reed (CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Silvia J. Esparza (CN=Silvia J. Esparza/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

CC: Laura Emmett (CN=Laura Emmett/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

CC: Christa Robinson (CN=Christa Robinson/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Emory L. Mayfield (CN=Emory L. Mayfield/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

CC: Cathy R. Mays (CN=Cathy R. Mays/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Mickey Ibarra (CN=Mickey Ibarra/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TEXT:

Here is the final Delaware Legislature POTUS briefing memo w/attachments as submitted to Staff Secretary last night:

Bruce and Elena -- I hope you received the hard copies I put on Laura and Cathy's chairs. Mike -- your copy of POTUS' briefing book (including this paper) is in the box outside of the Staff Secretary's office if you want to have someone pick it up.===== ATTACHMENT 1 =====

ATT CREATION TIME/DATE: 0 00:00:00.00

TEXT:

Unable to convert ARMS_EXT: [ATTACH.D17]MAIL40696472V.126 to ASCII,
The following is a HEX DUMP:

FF575043AA060000010A02010000000205000000913500000002000009A53B4FEFE3C727813EDC
38C8C53CF805BF57832D83690E24E48E2D12F44815E453CD6042514CBD360765A57132B45E3F6E
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May 7, 1998

REMARKS TO THE DELAWARE STATE LEGISLATURE

DATE: May 8, 1998
TIME: 12:30 - 2:10 p.m.
LOCATION: Legislative Hall, Senate Chambers
FROM: Mickey Ibarra
Bruce Reed
Fred DuVal

I. PURPOSE

To highlight your administration's education agenda in a speech to a joint session of the Delaware State Legislature. You will announce the transmission of your class size legislation, and discuss two Department of Education reports: one that demonstrates reduced class size leads to improved student achievement, and a second on your policy for enforcing zero tolerance for guns in school.

II. BACKGROUND

You will announce the transmission of your class-size legislation to Congress. The initiative will provide \$12.4 billion over seven years to ensure that every child receives personal attention, receives a solid foundation for further learning, and learns to read independently and well by the end of third grade. The initiative will also reduce class size in grades 1-3 to a nationwide average of 18 students by providing funds to help local school districts hire and pay the salaries of an additional 100,000 teachers. States will receive funds to boost teacher quality through teacher training, recruitment, and testing, and new teachers will be required to pass state competency tests.

Additionally, you will announce the findings of a new Education Department report showing that reducing class size - especially in the early grades - leads to improved student achievement. According to the report's analysis of research data and trends:

Reducing class size to below 20 students leads to higher student achievement. The report shows that students in smaller classes would on average move from the 50th percentile to above the 60th percentile and they would outperform their peers in larger classes. A national analysis of data on 4th graders in 203 school districts, and 8th graders in 182 school districts shows that lower student/teacher ratios increases math achievement. In addition, follow-up studies show that students from smaller classes in Tennessee continued to outperform their peers in

all academic subjects even after returning to larger classes in the 4th grade.
REMARKS TO THE DELAWARE STATE LEGISLATURE
PAGE TWO

Smaller classes make it easier for teachers to focus more on instruction and less on discipline. In Burke County, North Carolina's class size reduction effort, the percentage of classroom time devoted to instruction increased from 80 percent to 86 percent, while the time devoted to discipline and other non-instructional activities decreased.

A focus on teacher quality and training makes a difference. Smaller classes will only boost student achievement if teachers are prepared to teach well in these classes. A review of more than 100 research studies cautioned that positive effects of smaller classes were less likely if teachers did not change their instructional methods and classroom procedures in the smaller classes.

The benefits of smaller classes are clearest through the third grade. The clearest evidence of positive effects of smaller classes on student performance are in the primary grades, particularly kindergarten through third grade. Research on class size reduction efforts in Tennessee, Indiana, Wisconsin, and North Carolina show clear academic gains for students in smaller classes through the third grade.

You will also be announcing the findings of a new Department of Education report on the Gun-Free Schools Act. This report indicates that all states have now passed legislation providing that students who bring firearms to school will be expelled for at least one year. Although most schools do not report serious crimes to law enforcement - and less than 1% of students report bringing a gun to school - this new report shows that more than 6,000 students were disciplined for bringing a firearm (i.e., handguns, rifles, bombs, etc.) to their schools during the 1996-1997 school year. Most of these cases involved handguns that were brought to high schools.

Governor Tom Carper (D-DE), who will be introducing you to the State Legislature, will become the Chair of the National Governors' Association in August, 1998. The Governor is considered a leader among the governors in welfare reform and has recently concluded his service on the AMTRAK Board, on which he played a pivotal role in successful labor negotiations.

You will be the first U.S. President to address the Delaware Legislature. The State Senate is comprised of 13 Democrats and 8 Republicans. The Delaware State House consists of 27 Republicans and 14 Democrats. Two state legislators said they will not be attending your speech for political reasons. Governor Carper's office assured us, however, that this is not a serious issue.

REMARKS TO DELAWARE STATE LEGISLATURE
PAGE THREE

Delaware was the first state to ratify the Constitution, the second smallest U.S. state in area, and fifth smallest in population. The job market has increased rapidly in Delaware since the 1980's when Governor Pete du Pont (R) liberalized Delaware's banking laws to encourage out-of-state banks to locate their operations in Delaware.

III. PARTICIPANTS

The President
Governor Tom Carper (D)
Lieutenant Governor Ruth Ann Minner (D)
Senate Pro Tempore Tom Sharp (D)
House Speaker Terry Spence (R)
41 State Representatives
21 State Senators

IV. PRESS PLAN

Open press

V. SEQUENCE OF EVENTS

- **YOU** arrive and are greeted by Senate Pro Tempore Tom Sharp (D) and House Speaker Terry Spence (R)
- **YOU** proceed to Governor Tom Carper's ceremonial office for photo opportunity
- **YOU** proceed to Senate chamber with Senate Pro Tempore Sharp and House Speaker Spence
- **YOU** are announced by the Sergeant of Arms onto the Senate Floor and proceed up to dais
- Senate Pro Tempore Sharp delivers remarks and then **YOU**, House Speaker Terry Spence and Senate Pro Tempore Tom Sharp proceed to your seats
- Lieutenant Governor Ruth Ann Minner delivers remarks and introduces Governor Carper

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- Governor Carper delivers remarks and introduces **YOU**

REMARKS TO DELAWARE STATE LEGISLATURE
PAGE FOUR

- **YOU** deliver remarks
- **YOU** depart

VI. REMARKS

To be provided by Speech Writing

VII. ATTACHMENTS

Education in Delaware Fact Sheet

Summary of Class Size Legislation

Biographies of Governor Tom Carper, Lieutenant Governor Ruth Ann Minner, House Speaker Terry Spence and Senate Pro Tempore Tom Sharp

SUMMARY OF CLASS SIZE LEGISLATION

To master the basics and learn to read well, students need teachers who are prepared to teach well in smaller classes. Your class size reduction initiative will help do this in grades 1-3 by:

Requiring State Teacher Competency Testing for New Teachers: States would be required to implement competency testing for new teachers. Each state would select the tests it determines is most appropriate for this purpose. Most states have such tests. Participating school districts would be required to hire teachers who are fully certified or working towards full certification. School districts could use funds to provide teachers with the additional training needed to meet certification requirements.

Providing Funds for Teacher Training and Testing: At least 10% of the funds in this initiative would be used to promote high quality teaching by (1) training teachers in proven practices for teaching reading and in effective practices in small classes; (2) providing mentors or other support for newly hired teachers; (3) providing incentives to recruit qualified teachers to high poverty schools; and (4) testing new teachers before they are hired and developing rigorous tests for beginning teachers.

Encouraging States to Adopt Rigorous Professional Tests and Upgrade Teacher Certification Requirements: Teachers should be able to demonstrate that they know the subject to be taught and have the necessary knowledge and skills to help their students reach challenging state academic standards. States would be encouraged to use a portion of their funds to toughen teacher certification requirements and to require new teachers to demonstrate competence. For example, states could use these funds to develop rigorous tests of subject matter expertise and professional knowledge that prospective teachers would be required to pass before they start teaching.

Holding Schools Accountable for Results --Helping Every Child to Read Well and Independently By the End of the Third Grade: School districts receiving these funds would be required to show that each school is making measurable progress in improving reading achievement within 3 years, or take necessary corrective actions --such as providing additional teacher training, revising the curriculum, or implementing proven practices for teaching reading. School districts could lose funding if there is no subsequent improvement in reading achievement in those schools. School districts would also be required to publish an annual school report card with clear information on student achievement, class size, and teacher qualifications.

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Targeting Funding to Areas of Greatest Need: The Administration's initiative would distribute funds to states on the basis of the Title I formula. Within the state, each high-poverty school district would receive the same share of these funds as it received under Title I, and the remaining funds would be distributed within the state based on class size. Matching funds would be required from participating school districts, on a sliding scale ranging from 0-50 , with high-poverty districts contributing the least. Once a state has reached an average class size of 18 in grades 1-3, it could use these funds to further reduce class size in the early grades, or it could extend its efforts to other grades.

Providing Facilities for Additional Classrooms: In order to help school systems meet the need for additional classroom space, you are (1) proposing a \$10 billion school modernization initiative over 10 years, that will provide incentives for communities to invest in local school facilities by leveraging \$22 billion in bonds during 1999-2000; (2) ensuring that changes to facilities in order to accommodate class size reductions is an allowable use of school modernization funds; (3) allowing for phased-in implementation of class size initiative to enhance state/local planning.

Building on Successful Reforms in Arkansas: As part of his comprehensive education reforms while Governor of Arkansas, you reduced class size in Arkansas to 20 in kindergarten and 23 in grades 1 through 3. Your 1983 education reform plan also included a statewide intensive training program for elementary teachers and principals to improve teaching of reading, as well as basic skills testing for new teachers and basic skills and subject matter testing for experienced teachers.

EDUCATION REFORM IN DELAWARE

With bipartisan leadership and strong support from the business community, Delaware has undertaken a broad array of education reforms quite consistent with your education agenda. Delaware is moving ahead with efforts to set standards for students, teachers, and schools. The state is also supporting teachers who seek and gain certification from the National Board for Professional Teaching Standards, and Governor Carper has proposed an accountability plan including curbs against social promotion.

Student Academic Standards and Assessments. This week, the state is administering its first-ever statewide assessment of how students are doing according to Delaware's new academic standards, with testing in math and language arts (reading, and writing) for grades three, five, eight, and ten. Next year, similar tests will be given in science and social studies. There was extremely broad public involvement in the development of these standards, with State Board approval in 1995 coming after a three-year process of development and public review led by commissions representing school districts, business and institutions of higher education.

According to Delaware, the standards 'promote methods that require students to participate in learning activities that are relevant to them and that address real-world problems and issues...rather than encourage instructional methods that allow students to passively receive information from the teacher.' The assessments include multiple choice, as well as questions involving short answers and essays. Delaware's standards were rated favorably by the American Federation of Teachers and the Council for Basic Education and received mixed reviews from Fordham Foundation (Checker Finn's group). Each of these groups has rated standards from states across the nation.

Teacher And Administrator Standards and Assessments. In January 1998, the State Board of Education approved standards for what Delaware teachers and administrators ought to know and be able to do in their subject area and related to student learning styles, instructional practices, and assessment strategies. Delaware is considering the use of these standards as a basis for teacher certification, performance appraisal, and possibly even recertification.

All Delaware teachers are currently required to take and pass a basic teacher competency test by the end of their first year of teaching, and Governor Carper has proposed requiring teachers to pass this test before getting a license to begin teaching. Carper is also proposing that Delaware develop higher-level performance-based assessments for teachers that could become the basis for gaining licensure and certification.

Meanwhile, the state is helping teachers gain certification from the National Board for Professional Teaching Standards, with ten Delaware teachers already board-certified. The legislature appropriated funds to cover the assessment fees for another 15 teachers seeking Board certification, and Delaware teachers who gain board certification will receive an additional \$1500

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in pay per year.

Ending Social Promotion and Accountability. Governor Carper has proposed to the legislature a plan for greater accountability for Delaware students and schools. The plan would curb social promotion, requiring children to read at or near grade level before leaving third and fifth grades, and perform at or near grade level in both reading and math before leaving the 8th grade. The plan would also take actions to turn around consistently low-performing schools and school districts, including accreditation and cash bonuses for schools that show real improvements over two years and calling for school district interventions in lower-performing schools.

The legislature is currently considering the plan and it is supported by the PTA, the business community, and the NAACP. But many of the state's education organizations -- including the state organizations representing superintendents, local school boards, and teachers -- have offered alternative accountability plans and are negotiating changes in the Governor's plan. While these groups are not opposing the concepts of social promotion and accountability, they have concerns about certain details. For example, the Delaware superintendents' association is wary of any state involvement at all in school accountability, and the Delaware education association is working to include measures for school performance beyond just student test scores. The Governor's office is hopeful that agreement can be reached on most of these issues.

Reducing Class Size. Carper is negotiating with legislative leaders over a plan to reduce class size from kindergarten through the third grade. Carper's \$7.5 million plan would cap class size in these grades to 22, and Senator Thomas Sharp, President Pro Tem of the Delaware Senate, is pushing for additional funding to reduce class size even further. There seems to be extremely broad support in the Delaware legislature for these efforts to reduce class size in the early grades.

Educational Technology. Delaware has been moving forward with efforts on educational technology and next year plans to become the first state in the nation to wire every public school classroom with fiber optic cable. With strong support from the private sector, Delaware is also providing technology training for teachers and high-quality software.

Charter Schools, Public School Choice, and School Report Cards. Bipartisan support for public school choice and charter schools have produced laws and authorization for charter schools, intra-district, and inter-district public school choice in the state. 9,000 (out of 110,000) students are in public schools chosen by them and their families. Six charter schools have opened in the state including the state's first charter school -- the Charter School of Wilmington. Visited by Mrs. Clinton in 1996, this school was opened with very active support from the corporate community and focuses on math, science, and technology. The student population mirrors the diversity of the state, and the school had the highest writing scores in the state in 1997. The State Department of Education also publishes "consumer guides" to every public school in the state, including test scores, student-teacher ratios, drop-out rates, and other data.

BIOGRAPHIES OF LEADING ELECTED OFFICIALS

Hon. Tom Carper Governor of Delaware

Born in Beckley, West Virginia, Carper grew up in Danville, Virginia. He attended Ohio State University, graduating in 1968 with a bachelor's degree in economics. He completed five years of service as a Naval flight officer, serving in Southeast Asia during the Vietnam War. In 1973, following his active military service, Carper moved to Delaware to earn an MBA at the University of Delaware. He worked in Delaware's economic development office from 1975 to 1976, and then was elected State Treasurer at age 29 -- serving three consecutive terms.

Carper was elected in 1982 to the U.S. House of Representatives where he served five terms.

Carper was then elected governor in 1992. As Governor, he has focused on job creation; overhauling both the state's education and welfare systems; strengthening families and reducing teenage pregnancy; and improving the state's credit rating while lowering taxes and preventing crime. In July of 1997, Carper was tapped as vice-chair of the National Governors' Association. When he assumes the NGA chairmanship next year, he will become the first Delaware governor ever to hold the top post in that organization. He is also the only governor on the nation's nine-member Amtrak Board of Directors.

Hon. Ruth Ann Minner Lieutenant Governor of Delaware

In 1974, Ruth Ann became a rising star in the Democratic Party when she was the first woman elected to the House of Representatives from her Milford district. Rep. Minner spent four terms on the Bond Bill Committee, mastering the art of responsible capital spending. In 1982, she was elected to the state Senate where she eventually served three terms.

Lt. Governor Minner was born and raised on a farm and left high school at age 16 to help out. She married her first husband, Frank Ingram, a year later. Widowed at age 32 when Frank died of a heart attack, she was suddenly a single parent with no education and three sons to raise. While working to support her family, she earned her general equivalency degree from Delaware Technical and Community College and took University of Delaware parallel program courses in education. She married Roger Minner in 1969 and together they built the family business. Roger succumbed to cancer in 1992.

She was honored as Mother of the Year in 1993 and Woman of the Year in 1985. In 1995, she was inducted into the Delaware Women's Hall of Fame. Ruth Ann still lives on a farm near Milford where she enjoys gardening, fishing and spending time with her family, especially her seven grandchildren.

Hon. Terry R. Spence
Speaker of the Delaware House of Representatives

He attended Goldey Beacom College where he received an A.S. and Wilmington College, where he received a B.S. The Speaker served in the Delaware Air National Guard, is retired from the DuPont Company and worked for the Brooks Courier.

First elected to the House in 1980, Spence has been the Speaker of the House for nine years, where he has served on the Administration, Desegregation, Ethics, and Legislative Council Committees.

Spence and his wife, Nancy, have four children.

Hon. Tom Sharp
Senate Pro Tempore

Sharp served in the Army National Guard for eight years and worked as a sheet metal apprentice for four years at tech school.

He has served over 20 years in the Senate, and for all but a few years, was the Senate Majority Leader. Currently, Sharp works for the Newcastle County Vocational School District as the Supervisor of Building and Grounds.

He attended Henry C. Conrad High School where he met his wife, Judy; they wed after high school. Sharp has been married for 38 years and they have three children and two grandchildren who are twins.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Mindy E. Myers (CN=Mindy E. Myers/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME: 8-MAY-1998 10:59:03.00

SUBJECT: Dem Caucus Child Care

TO: Jennifer L. Klein (CN=Jennifer L. Klein/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Laura Emmett (CN=Laura Emmett/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

CC: Janet Murguia (CN=Janet Murguia/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TEXT: .

Just to recap on the Dem. Caucus child care meetings scheduled for next week--

There is a Dem. Caucus staff level child care meeting set for 2:00 pm on Tuesday (5/12) in 1416 LHOB.

There is a Dem. Caucus child care meeting with Members tentatively set for 10:30 am on Thursday (5/14). If the morning does not work for the Members, they may try for 2pm on Thursday. I'll let you know as soon as they let me know.

Thanks-
Mindy

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Laura Emmett (CN=Laura Emmett/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME: 8-MAY-1998 18:17:26.00

SUBJECT: Most Recent Assisted Suicide Memo

TO: Christopher C. Jennings (CN=Christopher C. Jennings/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TEXT:
Chuck Ruff and Karen Popp have copies of this and they will get comments
to us.===== ATTACHMENT 1 =====
ATT CREATION TIME/DATE: 0 00:00:00.00

TEXT:
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May 8, 1998

MEMORANDUM TO THE PRESIDENT

FROM: Bruce Reed
Chuck Ruff

SUBJECT: Assisted Suicide Legislation

The Justice Department has determined that the Drug Enforcement Administration (DEA) has no authority under the Controlled Substances Act (CSA) to take adverse action against physicians who assist patients in ending their lives by prescribing controlled substances pursuant to Oregon's "Death with Dignity Act." The Department conducted its legal analysis in response to letters sent by Senator Hatch and Congressman Hyde urging the Department, through DEA, to invoke the CSA against physicians who assist in patient suicide under the Oregon law.

The Justice Department has completed draft letters to Congressman Hyde and Senator Hatch explaining its legal conclusions. The letters will not be forwarded to Congress until we have developed a roll-out strategy, including a position on federal legislation prohibiting physician-assisted suicide.

As you will recall, the Catholic Health Association (CHA) has informed us that Hatch and Hyde are prepared to introduce legislation amending the CSA in the event the Attorney General concludes that the CSA does not authorize the DEA to pursue physicians who assist patients in committing suicide. They may even introduce this legislation before receiving the Department of Justice's opinion letter. In assessing the possible options for responding to Hatch's and Hyde's likely initiative, we held meetings within the White House and with the Departments of Justice and Health and Human Services (including the FDA).

Justice believes that the Administration should not support the Hatch/Hyde proposal. Justice is concerned with the resource drain on the DEA if that agency were tasked with enforcement duty. Justice also worries that this new task would damage DEA's relationship with the medical profession, on which it often relies in pursuing narcotics law violations. In addition, Justice thinks that DEA's approach to enforcing the narcotics laws is inconsistent with the kind of sensitivity that would be needed in pursuing doctors who are assisting terminally ill patients to commit suicide.

The Justice Department also cites principles of federalism in support of its position against a legislative change. The federal government has deferred to the states as the primary regulators of the medical profession. Especially on such a hotly contested issue as assisted suicide, Justice believes there is good reason to continue this tradition of deference to local

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decision-making.

HHS/FDA concurs with Justice's position, stressing especially the historic deference given to states in regulating their medical professionals. HHS/FDA also worries that a new federal law authorizing the federal government to take adverse action against doctors who assist their patients to commit suicide would exacerbate the problem of physicians' under-prescribing pain medications for terminally ill patients.

Your longstanding opposition to the practice of assisted suicide is not necessarily inconsistent with the agencies' positions. You could believe the position that assisted suicide is wrong, but that it is not a matter that should be handled by federal narcotics agents. Or more broadly, you could believe that it is not a matter to be dealt with by the federal government at all, but instead left to state and local decisionmaking. Nor is last year's "Assisted Suicide Funding Restriction Act" inconsistent with a refusal to support a legislative change. The Funding Restriction Act bans the use of federal funds to pay for or promote assisted suicide. Nothing in the Act authorizes the federal government to take adverse action against a private physician for assisting in a suicide in a non-federal facility.

We detail below four options for responding to the expected Hyde/Hatch initiative. These options are: (1) support the Hyde/Hatch legislation; (2) oppose the Hyde/Hatch DEA approach, but suggest openness to alternatives and work with Hatch and Hyde to develop a better bill; (3) engage in a "Kick the Can" strategy, suggesting openness to alternatives, but attempting to ensure that no congressional action is taken; and (4) oppose the Hyde/Hatch legislation outright.

- 1. Endorse Hyde/Hatch Legislative Alternative.** After the Justice Department's legal interpretation is released, we could endorse the expected introduction of legislation authorizing the DEA to pursue criminal actions against physicians prescribing medications for assisted suicides.

Pros

- Appears consistent with your longstanding opposition to assisted suicide.
- Avoids inevitable conflict with the Congress, where the Hatch/Hyde legislation is likely to be popular.

Cons

- Conflicts with historic practice of allowing states to regulate the medical profession, and does so with regard to a hotly contested and emotional issue on which local decisionmaking may be particularly appropriate.

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- Places authority to act against doctors in an agency ill-equipped to perform this function in a way that could interfere with its primary mission.
- Ignores danger, noted by many physicians' groups and even the Catholic Health Association, that a federal law of this kind will lead doctors to under-medicate terminally ill patients for fear of federal prosecution.

2. **Oppose DEA (likely Hatch/Hyde) approach, but suggest openness to alternatives.** Under this option, you would welcome the intent of the Republican DEA bill, based on your longstanding opposition to assisted suicide, but raise concerns about using federal drug agents and resources to address this issue. You would advise Republicans of ways to implement the intent of their legislation in a more workable fashion, perhaps suggesting alternative enforcement agencies (such as FDA) or enforcement mechanisms (such as reducing Federal support for Medicaid for states permitting assisted suicide). You would try seriously to find some common ground with the Republicans on developing a workable legislative alternative to DEA enforcement.

Pros

- Appears consistent with your longstanding opposition to assisted suicide and shows that you are seriously concerned about this issue.
- Takes an approach that recognizes the problems with using DEA resources and agents to address this issue.

Cons

- Assumes that we can develop a workable alternative approach, when we may not be able to do so. Direct regulation of doctors through HHS/FDA also raises serious issues, and enforcement mechanisms directed toward states, such as reduction of Medicaid dollars, would raise widespread protests of federal micro-management and intrusion.
- Raises expectations that a legislative solution can be achieved, when it may be virtually impossible to reach consensus.

3. **"Kick the Can" Strategy.** Under this option, you would also express openness to addressing this issue through federal legislation, but rather than trying to reach agreement, you would attempt to forestall legislative action. You would try to delay long enough to allow the medical groups, states, and others to communicate that federal approaches in this area are ill-advised. These objections could make Congress conclude that it does not

have time to draft thoughtful legislation this year.

Pros

- Allows you to reiterate your strong position against assisted suicide, while preventing problematic federal legislation.
- Provides sufficient time to air the many issues surrounding assisted suicide legislation, perhaps even educating physicians and the public about the problem of under-medicating terminally ill patients

Cons

- May make us look indecisive and weak.
- May be viewed with skepticism on the Hill and make us vulnerable to the charge that we are trying to have it both ways.

4. **Oppose Hatch/Hyde legislation outright.** Under this option, you would tell the Hill that, although you believe that assisted suicide is an abhorrent practice, you cannot support legislation that intrudes on state responsibility over this issue and diverts limited law enforcement resources for this purpose.

Pros

- Takes a strong position consistent with agency views on the undesirability of federal legislation in this area; respects federalism principles; protects law enforcement priorities; and prevents further under-medication of patients due to physicians' fear of criminal prosecution.

Cons

- Appears inconsistent with your longstanding opposition to assisted suicide.
- Risks major confrontation with the Congress, which almost certainly will pass federal legislation over your objection.

The Departments of Justice and Health and Human Services support Option 4 and strongly oppose Option 1. Of the middle options, they would prefer Option 3 to Option 2. Chuck agrees with the agencies: he believes both that the DEA should not regulate medical practice and that federal legislation in this area conflicts with federalism principles. Bruce

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agrees that federal legislation in this area makes little sense, but believes that the "Kick the Can" strategy may be the best way to prevent it; he therefore recommends Option 3.

May 8, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: Bruce Reed
Elena Kagan

RE: DPC Weekly Report

Tobacco -- Legislative Update: Although Senator Lott vacillated somewhat in the press this week, it appears he still intends to bring the McCain bill to the Senate floor on May 18th. We hope to begin talks shortly to develop an agreed upon manager's amendment as well as an amendment strategy for the floor. We have spent this week in internal meetings preparing for these negotiations in order to nail down our position and strategy on issues related to price, lookback penalties, smuggling, an antitrust exemption, preemption of local suits, environmental tobacco smoke, attorneys fees, and international tobacco control.

The Commerce Committee released their report this week, along with a revised bill that incorporated several of our proposed technical corrections. In response to their request for assistance in restructuring the bill so that it could operate effectively whether or not the industry consents, we met with Senator McCain's staff and provided them with **proposed revisions that separated out all the provisions requiring the consent of participating manufacturers -- as well as the benefits they are seeking, such as the liability cap -- into a single stand-alone title.** The other titles would apply to all manufacturers, whether they consent or not, and include advertising restrictions originally included in the FDA rule but not the broader ones that raise constitutional difficulties (those would be put in the separate title). McCain's staff appeared receptive to these changes, and they are considering including them in a manager's amendment.

We also met with Senator Hatch to assess his interest in these proposed structural changes, hoping that they could give him a way to leave his mark on the McCain bill constructively. While he expressed some interest in the proposal, he also reiterated concerns he raised during the Judiciary Committee hearing on smuggling -- namely, that the McCain bill would result in increased smuggling and would bankrupt the companies.

Tobacco -- Scoring: Through staff conversations, OMB has learned that the Joint Tax Committee is going to score the price per pack increase in the McCain bill at \$2, instead of the \$1.10 estimated by Treasury. We attribute this difference to Joint Tax's more conservative assumptions about the amount of industry payments that will be passed through to price, smuggling and coverage of tobacco products other than cigarettes. We have asked OMB to draft

a proposal which would ensure that as the volume of cigarette sales fall due to reduced smoking rates, the price would not rise accordingly.

Tobacco -- House Activity: Representatives Hansen, Meehan, and Waxman announced that they would introduce a bipartisan comprehensive tobacco legislation which would raise the price of cigarettes by \$1.50 over three years, reduce youth smoking by 80% over 10 years (compared to 60% in McCain), contain very strong company specific penalties (but no industry-wide penalties), provide full FDA authority to regulate tobacco under the existing drug and device titles, and have strong protections against environmental smoke. The proposal would raise approximately \$500 billion over 25 years, with 10% of spending for public health and education programs, 35% for the states, and 55% for federal debt reduction. The proposal does not provide any assistance to farmers. Drs. Koop and Kessler endorsed the bill.

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Peter Rundlet (CN=Peter Rundlet/OU=WHO/O=EOP [WHO])

CREATION DATE/TIME: 8-MAY-1998 13:36:41.00

SUBJECT: NOTE RE: Benchmarking Meeting

TO: Andrew J. Mayock (CN=Andrew J. Mayock/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Richard.Hayes (Richard.Hayes @ SBA.GOV @ inet [UNKNOWN])
READ:UNKNOWN

TO: Susan M. Liss (CN=Susan M. Liss/O=OVP @ OVP [UNKNOWN])
READ:UNKNOWN

TO: Peter Rundlet (CN=Peter Rundlet/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Robert N. Weiner (CN=Robert N. Weiner/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Beverly J. Barnes (CN=Beverly J. Barnes/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Ann F. Lewis (CN=Ann F. Lewis/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Edward W. Correia (CN=Edward W. Correia/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Tracey E. Thornton (CN=Tracey E. Thornton/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Dawn M. Chirwa (CN=Dawn M. Chirwa/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TO: Sally Katzen (CN=Sally Katzen/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Ruby Shamir (CN=Ruby Shamir/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

CC: Aimee M. Malnati (CN=Aimee M. Malnati/O=OVP @ OVP [UNKNOWN])
READ:UNKNOWN

CC: June G. Turner (CN=June G. Turner/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

CC: Laura Emmett (CN=Laura Emmett/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

CC: Shannon Mason (CN=Shannon Mason/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Sylvia M. Mathews (CN=Sylvia M. Mathews/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TEXT:

Reminder: this meeting is at 2:00 today! Thank you.

I just wanted to let you know that it is important that you come to this meeting on time. If you cannot make the meeting, please let me know ASAP. A reporter from Harper's Bazaar will be present at the meeting because she is doing a profile on Sylvia. A firm understanding will be in place that the substance of the meeting is off the record.

----- Forwarded by Peter Rundlet/WHO/EOP on 05/06/98
05:35 PM -----

June G. Turner

05/05/98 12:06:53 PM

Record Type: Record

To: See the distribution list at the bottom of this message
cc: Shannon Mason/OPD/EOP, Aimee M. Malnati/OVP @ OVP
Subject: Benchmarking Meeting

Sylvia Mathews will host a Benchmarking meeting on Friday, May 8 at 2pm in the Roosevelt Room.

Attendees:

Sylvia Mathews
Sally Katzen
Rob Weiner
Dawn Chirwa
Peter Rundlet
Eddie Correia
Tracey Thornton
Susan Liss
Nancy McFadden (DOT)
Mark Gross (Justice)
Fran Allegra (Justice)
Richard Hayes (SBA)

Message Sent

To:

Sally Katzen/OPD/EOP
Robert N. Weiner/WHO/EOP
Dawn M. Chirwa/WHO/EOP
Peter Rundlet/WHO/EOP
Tracey E. Thornton/WHO/EOP
Susan M. Liss/OVP @ OVP
Edward W. Correia/WHO/EOP
Richard.Hayes @ SBA.GOV @ inet

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Todd A. Summers (CN=Todd A. Summers/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME: 8-MAY-1998 11:57:50.00

SUBJECT: Proposed Hitt Letter

TO: Christopher C. Jennings (CN=Christopher C. Jennings/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Daniel N. Mendelson (CN=Daniel N. Mendelson/OU=OMB/O=EOP @ EOP [OMB])
READ:UNKNOWN

TO: Sarah A. Bianchi (CN=Sarah A. Bianchi/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

TO: Richard J. Turman (CN=Richard J. Turman/OU=OMB/O=EOP @ EOP [OMB])
READ:UNKNOWN

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])
READ:UNKNOWN

CC: Daniel W. Burkhardt (CN=Daniel W. Burkhardt/OU=WHO/O=EOP @ EOP [WHO])
READ:UNKNOWN

TEXT:

Below is a draft letter to Dr. Hitt, Chair of the President's Advisory Council on HIV/AIDS, in response to a letter expressing concern about needle exchange and the Administration's commitment to HIV prevention.

Since this articulates our response to a very sensitive issue, I would appreciate it if you would review the letter and reply to me with any comments by the end of today (Friday).

Dear Dr. Hitt:

Thank you for your letter regarding needle exchange programs and prevention in the fight to end the AIDS epidemic.

I am taking the concerns you have raised very seriously. We all know that the rising incidence of HIV infection among those who use injected drugs, and among their partners and children, is a major factor in the continued growth of this epidemic. Therefore, I will continue to support retention of the HHS Secretary's authority to decide whether to allow local communities to use federal funds for needle exchange programs.

Recently, the Secretary released a report indicating that needle exchange programs can help reduce HIV transmissions without encouraging the use of illegal drugs. This scientific analysis should be of great use to those local and state officials that are considering the implementation of needle exchange as part of their comprehensive HIV prevention strategies.

However, we are not at this time allowing for Federal funds to be used for such programs. That decision was made because we believe that Congress would not support such a move. More must be done to help the general public and

those
in Congress understand the role of needle exchange programs in our efforts
to fight both HIV and illegal drug use.

In the interim, the Office of National AIDS Policy, the Office of Drug
Control Policy,
and the Department of Health and Human Services will work together to
improve our efforts to stop the spread of HIV among injection drug users,
their
partners, and their children.

I appreciate the passion that you and other members of the
Presidential Advisory Council on HIV/AIDS bring to the debate. Be
assured that my commitment to ending this epidemic -- and to
responding to the needs of those already living with HIV and AIDS --
remains firm. We must all work together to stop this deadly disease,
and I will take all measures within my authority to achieve that end.

Thank you again for sharing your concerns, and for your commitment to
bringing an end to this terrible epidemic.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Bruce N. Reed (CN=Bruce N. Reed/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME: 8-MAY-1998 09:11:08.00

SUBJECT: Re: Summer Vacations

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

TEXT:

... that will give you time to prepare for your confirmation hearing

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Paul J. Weinstein Jr. (CN=Paul J. Weinstein Jr./OU=OPD/O=EOP [OPD])

CREATION DATE/TIME: 8-MAY-1998 11:57:53.00

SUBJECT: Homelessness

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP [OPD])

READ:UNKNOWN

TEXT:

Bruce signed off on having Tom and Mary work on the interagency council on homelessness. Is that ok with you?

May 8, 1998

MEMORANDUM FOR THE PRESIDENT

Automated Records Management System
Hex-Dump Conversion

FROM: Bruce Reed
Elena Kagan

RE: DPC Weekly Report

Tobacco -- Legislative Update: Although Senator Lott vacillated somewhat in the press this week, it appears he still intends to bring the McCain bill to the Senate floor on May 18th. We hope to begin talks shortly to develop an agreed upon manager's amendment as well as an amendment strategy for the floor. We have spent this week in internal meetings preparing for these negotiations in order to nail down our position and strategy on issues related to price, lookback penalties, smuggling, an antitrust exemption, preemption of local suits, environmental tobacco smoke, attorneys fees, and international tobacco control.

The Commerce Committee released their report this week, along with a revised bill that incorporated several of our proposed technical corrections. In response to their request for assistance in restructuring the bill so that it could operate effectively whether or not the industry consents, we met with Senator McCain's staff and provided them with **proposed revisions that separated out all the provisions requiring the consent of participating manufacturers -- as well as the benefits they are seeking, such as the liability cap -- into a single stand-alone title.** The other titles would apply to all manufacturers, whether they consent or not, and include advertising restrictions originally included in the FDA rule but not the broader ones that raise constitutional difficulties (those would be put in the separate title). McCain's staff appeared receptive to these changes, and they are considering including them in a manager's amendment.

We also met with Senator Hatch to assess his interest in these proposed structural changes, hoping that they could give him a way to leave his mark on the McCain bill constructively. While he expressed some interest in the proposal, he also reiterated concerns he raised during the Judiciary Committee hearing on smuggling -- namely, that the McCain bill would result in increased smuggling and would bankrupt the companies.

Tobacco -- Scoring: Through staff conversations, OMB has learned that the Joint Tax Committee is going to score the price per pack increase in the McCain bill at \$2, instead of the \$1.10 estimated by Treasury. We attribute this difference to Joint Tax's more conservative assumptions about the amount of industry payments that will be passed through to price, smuggling and coverage of tobacco products other than cigarettes. We have asked OMB to draft

a proposal which would ensure that as the volume of cigarette sales fall due to reduced smoking rates, the price would not rise accordingly.

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Welfare -- HHS Defines Programs Off Limits to Illegal Aliens: In the next few weeks, HHS will publish a list of benefits that illegal immigrants may not receive. The welfare law states that illegal immigrants are not eligible for "federal public benefits," and HHS is now providing its interpretation of that term. HHS will state that illegal immigrants are not eligible for child care, low-income heating assistance, and Community Service block grant benefits, among others. However, HHS believes the law does allow illegal immigrants to remain eligible for services at community health clinics and for benefits under the Maternal and Child Health block grant and the Older Americans Act. Republicans such as Rep. Lamar Smith and Gov. Wilson of California will argue that HHS should have defined the term federal public benefit far more broadly to include these programs, but we are comfortable with HHS's legal rationale. HHS feels strongly that community health clinics, which are often the only providers of prenatal care in poor communities, should remain open to all.

The welfare law also requires that those programs classified as federal public benefits verify the immigration status of all applicants, including U.S. citizens. The INS will soon issue a regulation to implement this requirement, and we expect to hear complaints about the burden this will impose on those programs.

Crime -- Uniform Crime Report: Next weekend (May 15-17), the FBI will release its preliminary estimate of the number of crimes reported to law enforcement in 1997. These figures indicate that crime is down 4% from the previous year -- and down for the 6th year in a row. A significant decline in the number of murders and robberies (9% each) helped fuel an overall drop of 5% in violent crime; property crime fell 4%. All regions of the country and cities of all sizes reported declines in the number of serious crimes.

Crime -- COPS: On Thursday, the COPS Office announced \$32.8 million in funding to hire 463 additional officers and deputies. The grants will go to 138 law enforcement agencies nationwide, bringing the total number of officers funded under the COPS Program to over 73,000.

Crime -- Gun-Free Schools Report: Several weeks ago we sent you information on the Department of Education's proposed Gun-Free Schools Report for the 1996-97 school year. As you know, this information was released this Friday, but with several major revisions. Most notably, the initial data from Colorado included all expulsion and were adjusted significantly downward (from 1,873 to 475). The final and revised key findings are:

- 1) Total expulsions: 6,093 students were expelled during the 1996-97 school year for bringing a firearm to school (a rate of .119 per 1,000 students).
- 2) Compliance up: 55 states and territories reported data during the 1996-97 school year. Only American Samoa did not report.
- 3) States with most expulsions: by number, were Ohio (937), California (723), and Texas (532); and by rate, Ohio (.449 per 1,000), Missouri (.310 per 1,000) and New Mexico (.195 per 1,000).
- 4) School level: 58% of expulsions were high school students, 34% were in junior high, and 9% were in elementary school.
- 5) Type of firearm: where firearm type was identified, 58% involved handguns, 7% involved rifles and the remaining 35% involved some other type of firearm (bombs, grenades, starter pistols, rockets).

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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Paul J. Weinstein Jr. (.CN=Paul J. Weinstein Jr./OU=OPD/O=EOP [OPD])

CREATION DATE/TIME: 8-MAY-1998 12:01:12.00

SUBJECT: Re: Draft Proposal

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP [OPD])

READ:UNKNOWN

TEXT:

Should I begin briefing staff on the new procedures or do you have any changes?

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Cynthia Dailard (CN=Cynthia Dailard/OU=OPD/O=EOP [OPD])

CREATION DATE/TIME: 8-MAY-1998 20:09:07.00

SUBJECT: Choice hearing

TO: Elena Kagan (CN=Elena Kagan/OU=OPD/O=EOP @ EOP [OPD])

READ:UNKNOWN

CC: Laura Emmett (CN=Laura Emmett/OU=WHO/O=EOP @ EOP [WHO])

READ:UNKNOWN

TEXT:

FYI -- the Senate Judiciary Committee is holding a hearing on May 20 on Senator Abraham's bill, S.1645, which makes it a federal crime for anyone to take a minor across state lines for an abortion if it would violate the state's parental consent law. Pro-choice Hill staffers are VERY nervous. Let me know if you want me to do any work on this.